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2 An act relating to indoor smoking places;  
3 amending s. 386.203, F.S.; conforming a  
4 cross-reference; defining the term "person" for  
5 purposes of the act; redefining the term  
6 "stand-alone bar" to include a licensed  
7 premises that derives no more than a specified  
8 amount of gross revenue from the sale of food  
9 consumed on the licensed premises and that is  
10 located in a building individually listed in  
11 the National Register of Historic Places;  
12 requiring that an application for historic  
13 designation be submitted within a specified  
14 period of time; amending s. 386.204, F.S.;  
15 eliminating certain exceptions to the  
16 prohibition against smoking in an enclosed  
17 indoor workplace; prohibiting a proprietor or  
18 person in charge of an enclosed indoor  
19 workplace from permitting smoking in that  
20 workplace; requiring that a proprietor or  
21 person in charge of an enclosed indoor  
22 workplace request a person who is smoking to  
23 stop smoking or leave the premises; providing  
24 penalties; amending s. 386.2045, F.S.;  
25 conforming cross-references; amending s.  
26 386.205, F.S.; conforming cross-references;  
27 amending s. 386.206, F.S.; deleting certain  
28 provisions made obsolete by operation of law  
29 which require the posting of signs in an  
30 enclosed indoor workplace; amending s. 386.208,  
31 F.S.; authorizing a law enforcement officer to

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1 issue a citation to a person who violates the  
2 Florida Clean Indoor Air Act; providing  
3 requirements for the citation; providing that  
4 failure to comply with a citation is deemed a  
5 waiver of the right to contest the citation;  
6 authorizing a law enforcement officer to remove  
7 a person from the premises who is in violation  
8 of the Florida Clean Indoor Air Act; providing  
9 that penalties imposed under the act do not  
10 limit other actions by a law enforcement  
11 officer or state agency; amending s. 561.695,  
12 F.S.; conforming cross-references; providing a  
13 penalty for a licensee who knowingly makes a  
14 false statement on an annual compliance  
15 affidavit; eliminating provisions requiring a  
16 stand-alone bar to certify to the Division of  
17 Alcoholic Beverages and Tobacco of the  
18 Department of Business and Professional  
19 Regulation compliance with certain provisions  
20 of the Florida Clean Indoor Air Act; providing  
21 additional penalties for a third or subsequent  
22 violation of requirements applicable to a  
23 stand-alone bar; providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Subsection (5) and present subsection (11)  
28 of section 386.203, Florida Statutes, are amended, present  
29 subsections (6) through (13) of that section are redesignated  
30 as subsections (7) through (14), respectively, and a new  
31 subsection (6) is added to that section, to read:

1 386.203 Definitions.--As used in this part:

2 (5)(a) "Enclosed indoor workplace" means any place  
3 where one or more persons engages in work, and which place is  
4 predominantly or totally bounded on all sides and above by  
5 physical barriers, regardless of whether such barriers consist  
6 of or include, without limitation, uncovered openings;  
7 screened or otherwise partially covered openings; or open or  
8 closed windows, jalousies, doors, or the like. A place is  
9 "predominantly" bounded by physical barriers during any time  
10 when both of the following conditions exist:

11 1.(a) It is more than 50 percent covered from above by  
12 a physical barrier that excludes rain;7 and

13 2.(b) More than 50 percent of the combined surface  
14 area of its sides is covered by closed physical barriers. In  
15 calculating the percentage of side surface area covered by  
16 closed physical barriers, all solid surfaces that block air  
17 flow, except railings, must be considered as closed physical  
18 barriers. This section applies to all such enclosed indoor  
19 workplaces and enclosed parts thereof without regard to  
20 whether work is occurring at any given time.

21 (b)(c) The term does not include any facility owned or  
22 leased by and used exclusively for noncommercial activities  
23 performed by the members and guests of a membership  
24 association, including social gatherings, meetings, dining,  
25 and dances, if no person or persons are engaged in work as  
26 defined in subsection(13)(12).

27 (6) "Person" has the same meaning as in s. 1.01(3).

28 (12)(11) "Stand-alone bar" means any licensed premises  
29 devoted during any time of operation predominantly or totally  
30 to serving alcoholic beverages, intoxicating beverages, or  
31 intoxicating liquors, or any combination thereof, for

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1 consumption on the licensed premises; in which the serving of  
2 food, if any, is merely incidental to the consumption of any  
3 such beverage; the licensed premises does not offer a  
4 children's menu or include in the menu items or food portion  
5 sizes that are identified as being specifically for children,  
6 and the licensed premises is not located within, and does not  
7 share any common entryway or common indoor area with, any  
8 other enclosed indoor workplace, including any business for  
9 which the sale of food or any other product or service is more  
10 than an incidental source of gross revenue. A place of  
11 business constitutes a stand-alone bar in which the service of  
12 food is merely incidental in accordance with this subsection  
13 if the licensed premises derives no more than 10 percent of  
14 its gross revenue from the sale of food consumed on the  
15 licensed premises. However, a place of business remains a  
16 stand-alone bar in which the service of food is merely  
17 incidental if the licensed premises derives no more than 20  
18 percent of its gross revenue from the sale of food consumed on  
19 the licensed premises, the premises is licensed as a vendor as  
20 of July 1, 2005, and the licensed premises is located in a  
21 building that is individually listed in the National Register  
22 of Historic Places as defined in s. 267.021. An application to  
23 individually list the building in the National Register of  
24 Historic Places must have been submitted to the Department of  
25 State on or before 90 days after the effective date of this  
26 act.

27 Section 2. Section 386.204, Florida Statutes, is  
28 amended to read:

29 386.204 Prohibition.--

30 (1) A person may not smoke in an enclosed indoor  
31 workplace, ~~except as otherwise provided in s. 386.2045.~~

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1           (2) A proprietor or other person in charge of an  
2 enclosed indoor workplace may not permit smoking in that  
3 enclosed indoor workplace. If the proprietor or other person  
4 in charge of an enclosed indoor workplace observes smoking in  
5 that workplace or has been notified of observed smoking in  
6 that workplace in violation of this part, the proprietor or  
7 other person in charge of the enclosed indoor workplace shall  
8 request the violator to stop smoking and, if the violator does  
9 not comply, the proprietor or other person in charge of the  
10 enclosed indoor workplace shall require the violator to leave  
11 the premises. A proprietor or other person in charge of an  
12 enclosed indoor workplace who fails to comply with this  
13 subsection is subject to the procedures and penalties  
14 prescribed in ss. 386.207 and 561.695, as applicable.

15           Section 3. Subsections (2) and (4) of section  
16 386.2045, Florida Statutes, are amended to read:

17           386.2045 Enclosed indoor workplaces; specific  
18 exceptions.--Notwithstanding s. 386.204, tobacco smoking may  
19 be permitted in each of the following places:

20           (2) RETAIL TOBACCO SHOP.--An enclosed indoor workplace  
21 dedicated to or predominantly for the retail sale of tobacco,  
22 tobacco products, and accessories for such products, as  
23 defined in s. 386.203(9) ~~s. 386.203(8)~~.

24           (4) STAND-ALONE BAR.--A business that meets the  
25 definition of a stand-alone bar as defined in s. 386.203(12)  
26 ~~s. 386.203(11)~~ and that otherwise complies with all applicable  
27 provisions of the Beverage Law and this part.

28           Section 4. Subsection (1) of section 386.205, Florida  
29 Statutes, is amended to read:

30           386.205 Customs smoking rooms.--A customs smoking room  
31 may be designated by the person in charge of an airport

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1 in-transit lounge under the authority and control of the  
2 Bureau of Customs and Border Protection of the United States  
3 Department of Homeland Security. A customs smoking room may  
4 only be designated in an airport in-transit lounge under the  
5 authority and control of the Bureau of Customs and Border  
6 Protection of the United States Department of Homeland  
7 Security. A customs smoking room may not be designated in an  
8 elevator, restroom, or any common area as defined by s.  
9 386.203. Each customs smoking room must conform to the  
10 following requirements:

11 (1) Work, other than essential services defined in s.  
12 386.203(7) ~~s. 386.203(6)~~, must not be performed in the room at  
13 any given time.

14 Section 5. Section 386.206, Florida Statutes, is  
15 amended to read:

16 386.206 Posting of signs; requiring policies.--

17 ~~(1) The person in charge of an enclosed indoor  
18 workplace that prior to adoption of s. 20, Art. X of the State  
19 Constitution was required to post signs under the requirements  
20 of this section must continue to conspicuously post, or cause  
21 to be posted, signs stating that smoking is not permitted in  
22 the enclosed indoor workplace. Each sign posted pursuant to  
23 this section must have letters of reasonable size which can be  
24 easily read. The color, design, and precise place of posting  
25 of such signs shall be left to the discretion of the person in  
26 charge of the premises.~~

27 (1)(2) The proprietor or other person in charge of an  
28 enclosed indoor workplace must develop and implement a policy  
29 regarding the smoking prohibitions established in this part.  
30 The policy may include, but is not limited to, procedures to  
31 be taken when the proprietor or other person in charge

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1 witnesses or is made aware of a violation of s. 386.204 in the  
2 enclosed indoor workplace and must include a policy which  
3 prohibits an employee from smoking in the enclosed indoor  
4 workplace. In order to increase public awareness, the person  
5 in charge of an enclosed indoor workplace may, at his or her  
6 discretion, post "NO SMOKING" signs as deemed appropriate.

7 (2)~~(3)~~ The person in charge of an airport terminal  
8 that includes a designated customs smoking room must  
9 conspicuously post, or cause to be posted, signs stating that  
10 no smoking is permitted except in the designated customs  
11 smoking room located in the customs area of the airport. Each  
12 sign posted pursuant to this section must have letters of  
13 reasonable size that can be easily read. The color, design,  
14 and precise locations at which such signs are posted shall be  
15 left to the discretion of the person in charge of the  
16 premises.

17 (3)~~(4)~~ The proprietor or other person in charge of an  
18 enclosed indoor workplace where a smoking cessation program,  
19 medical research, or scientific research is conducted or  
20 performed must conspicuously post, or cause to be posted,  
21 signs stating that smoking is permitted for such purposes in  
22 designated areas in the enclosed indoor workplace. Each sign  
23 posted pursuant to this section must have letters of  
24 reasonable size which can be easily read. The color, design,  
25 and precise locations at which such signs are posted shall be  
26 left to the discretion of the person in charge of the  
27 premises.

28 ~~(5) The provisions of subsection (1) shall expire on~~  
29 ~~July 1, 2005.~~

30 Section 6. Section 386.208, Florida Statutes, is  
31 amended to read:

1 386.208 Penalties.--

2 (1) Any person who violates s. 386.204 commits a  
3 noncriminal violation as defined in s. 775.08(3), punishable  
4 by a fine of not more than \$100 for the first violation and  
5 not more than \$500 for each subsequent violation. Jurisdiction  
6 shall be with the appropriate county court.

7 (2) A law enforcement officer may issue a citation in  
8 such form as prescribed by a county or municipality to any  
9 person who violates the provisions of this part. Any such  
10 citation must contain:

11 (a) The date and time of issuance.

12 (b) The name and address of the person cited.

13 (c) The date and time the civil infraction was  
14 committed.

15 (d) The statute violated.

16 (e) The facts constituting the violation.

17 (f) The name and authority of the law enforcement  
18 officer.

19 (g) The procedure for the person to follow in order to  
20 pay the fine, contest the citation, or appear in court.

21 (h) The applicable range of the fine for the  
22 violation, which may not be more than \$100 for a first  
23 violation and not more than \$500 for each subsequent  
24 violation.

25 (3) Any person who fails to comply with the directions  
26 of the citation shall be deemed to have waived his or her  
27 right to contest the citation and the court may issue an order  
28 to show cause.

29 (4) If a person who violates s. 386.204, or any  
30 provision of this part, refuses to comply with the request of  
31 the proprietor or other person in charge of an enclosed indoor



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1 workplace to stop smoking or otherwise comply with the  
2 provisions of this part, a law enforcement officer may remove  
3 the violator from the premises.

4 (5) This section does not limit any other action or  
5 remedy that is available to a proprietor or other person in  
6 charge of an enclosed indoor workplace and does not limit the  
7 authority of a law enforcement officer, the department, or the  
8 Division of Hotels and Restaurants and the Division of  
9 Alcoholic Beverages and Tobacco of the Department of Business  
10 and Professional Regulation to enforce the provisions of this  
11 part or any other rule, law, or ordinance.

12 Section 7. Subsections (1), (5), (6), (7), and (8) of  
13 section 561.695, Florida Statutes, are amended to read:

14 561.695 Stand-alone bar enforcement; qualification;  
15 penalties.--

16 (1) The division shall designate as a stand-alone bar  
17 the licensed premises of a vendor that operates a business  
18 that meets the definition of a stand-alone bar in s.  
19 386.203(12) ~~s. 386.203(11)~~ upon receipt of the vendor's  
20 election to permit tobacco smoking in the licensed premises.

21 (5) After the initial designation, to continue to  
22 qualify as a stand-alone bar the licensee must provide to the  
23 division annually, on or before the licensee's annual renewal  
24 date, an affidavit that certifies, with respect to the  
25 preceding 12-month period, the following:

26 (a) No more than 10 percent of the gross revenue of  
27 the business is from the sale of food consumed on the licensed  
28 premises as defined in s. 386.203(12) or, if such licensed  
29 premises is in a building that is individually listed in the  
30 National Register of Historic Places as defined in s. 267.021,  
31 no more than 20 percent of the gross revenue of the business

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1 is from the sale of food consumed on the licensed premises s-  
2 386.203(11). However, an application to individually list the  
3 building in the National Register of Historic Places must have  
4 been submitted to the Department of State on or before 90 days  
5 after the effective date of this act.

6 (b) Other than customary bar snacks as defined by rule  
7 of the division, the licensed vendor does not provide or serve  
8 food to a person on the licensed premises without requiring  
9 the person to pay a separately stated charge for food that  
10 reasonably approximates the retail value of the food.

11 (c) The licensed vendor conspicuously posts signs at  
12 each entrance to the establishment stating that smoking is  
13 permitted in the establishment.

14  
15 The division shall establish by rule the format of the  
16 affidavit required by this subsection. A vendor shall not  
17 knowingly make a false statement on the affidavit required by  
18 this subsection. In addition to the penalties provided in  
19 subsection (7), a person who knowingly makes a false statement  
20 on the affidavit required by this subsection may be subject to  
21 suspension or revocation of his or her alcoholic beverage  
22 license under s. 561.29.

23 ~~(6) Every third year after the initial designation, on~~  
24 ~~or before the licensee's annual license renewal, the licensed~~  
25 ~~vendor must additionally provide to the division an agreed~~  
26 ~~upon procedures report in a format established by rule of the~~  
27 ~~department from a Florida certified public accountant that~~  
28 ~~attests to the licensee's compliance with the percentage~~  
29 ~~requirement of s. 386.203(11) for the preceding 36 month~~  
30 ~~period. Such report shall be admissible in any proceeding~~  
31 ~~pursuant to s. 120.57. This subsection does not apply to a~~

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1 ~~stand alone bar if the only food provided by the business, or~~  
2 ~~in any other way present or brought onto the premises for~~  
3 ~~consumption by patrons, is limited to nonperishable snack food~~  
4 ~~items commercially prepackaged off the premises of the~~  
5 ~~stand alone bar and served without additions or preparation;~~  
6 ~~except that a stand alone bar may pop popcorn for consumption~~  
7 ~~on its premises, provided that the equipment used to pop the~~  
8 ~~popcorn is not used to prepare any other food for patrons.~~

9 ~~(6)(7)~~ The Division of Alcoholic Beverages and Tobacco  
10 shall have the power to enforce the provisions of part II of  
11 chapter 386 and to audit a licensed vendor that operates a  
12 business that meets the definition of a stand-alone bar as  
13 provided in s. 386.203(12) ~~s. 386.203(11)~~ for compliance with  
14 this section.

15 ~~(7)(8)~~ Any licensed vendor ~~that operates a business~~  
16 ~~that meets the definition of a stand alone bar as provided in~~  
17 ~~s. 386.203(11)~~ who violates the provisions of this section or  
18 part II of chapter 386 shall be subject to the following  
19 penalties:

20 (a) For the first violation, the vendor shall be  
21 subject to a warning or a fine of up to \$500, or both;

22 (b) For the second violation within 2 years after the  
23 first violation, the vendor shall be subject to a fine of not  
24 less than \$500 or more than \$2,000;

25 (c) For the third or subsequent violation within 2  
26 years after the first violation, the vendor shall be subject  
27 to a fine of not less than \$500 or more than \$2,000, and any  
28 vendor that operates a business that meets the definition of a  
29 stand-alone bar as provided in s. 386.203(12) shall receive a  
30 suspension of the right to maintain a stand-alone bar in which  
31 tobacco smoking is permitted, not to exceed 30 days, and shall

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1 be subject to a fine of not less than \$500 or more than  
2 \$2,000; and  
3 (d) For the fourth or subsequent violation, the vendor  
4 shall be subject to a fine of not less than \$500 or more than  
5 \$2,000, and any vendor that operates a business that meets the  
6 definition of a stand-alone bar as provided in s. 386.203(12)  
7 shall receive a 60-day suspension of the right to maintain a  
8 stand-alone bar in which tobacco smoking is permitted and  
9 shall be subject to a fine of not less than \$500 or more than  
10 \$2,000 or revocation of the right to maintain a stand-alone  
11 bar in which tobacco smoking is permitted.

12 Section 8. This act shall take effect July 1, 2005.

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